

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ROBERT PONTE,

Plaintiff,

Civil Action No. 2:12-cv-13901-SFC-DRG

v.

Hon. Sean F. Cox

CHASE BANK USA, N.A., as an Enterprise
and by its Managing Officers and Board of
Directors, JAMES DIMON, CEO, JOHN DOE
1 through N; MARY JANE M. ELLIOTT,
P.C.; and PORTFOLIO RECOVERY
ASSOCIATES L.L.C.,

Defendants.

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**MOTION TO STAY PROCEEDINGS PENDING
TRANSFER TO MULTIDISTRICT LITIGATION COURT**

Defendants Chase Bank USA, N.A. and Jamie Dimon (together, "Chase") respectfully
request a stay of proceedings in this Court pending the potential transfer of this action to the
United States District Court for the Northern District of California, the Hon. Maxine M. Chesney

presiding (the “MDL Court”).¹ In support of this Motion, Chase relies on its accompanying Brief in Support.

In accordance with E.D. Mich. LR 7.1(a), on September 28, 2012, Chase’s counsel contacted Plaintiff and (i) explained the nature of this Motion and its legal basis and (ii) requested concurrence in the relief sought; however, Chase’s counsel did not receive such concurrence from Plaintiff.

WHEREFORE, in order to conserve the time and resources of the Court and the parties, Chase respectfully requests that the Court stay this action pending a final ruling by the Judicial Panel on Multidistrict Litigation (“JPML”) on Chase’s motion to transfer pursuant to 28 U.S.C. § 1407.

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Dated: September 28, 2012

¹ Mr. Dimon does not concede the personal jurisdiction of this court and appears in this action for the limited purpose of seeking a stay for the purposes expressed herein. Mr. Dimon expressly reserves his right to file a motion to dismiss and to raise any defenses, including but not limited to the defense for lack of personal jurisdiction pursuant to Rule 12(b)(1), if the court retains jurisdiction.

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**BRIEF IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING
TRANSFER TO MULTIDISTRICT LITIGATION COURT**

STATEMENT OF ISSUES PRESENTED

Should this action be stayed pending a final ruling by the Judicial Panel on Multidistrict Litigation on Chase's motion to transfer pursuant to 28 U.S.C. § 1407?

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Defendants Chase Bank USA, N.A. and Jamie Dimon rely on 28 U.S.C. § 1407, and the authorities cited to in their Brief in Support.

ARGUMENT

Defendants Chase Bank USA, N.A. and Jamie Dimon (together, “Chase”) respectfully request a stay of proceedings in this Court pending the potential transfer of this action to the United States District Court for the Northern District of California, the Hon. Maxine M. Chesney presiding (the “MDL Court”).²

On June 26, 2009, the Judicial Panel on Multidistrict Litigation (“JPML”) ordered fourteen actions transferred to the MDL Court for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 (the “Transfer Order”). A copy of the Transfer Order is attached hereto as Exhibit A. In addition to those fourteen actions, the JPML also issued two conditional transfer orders identifying eighteen actions as “tag-along” actions subject to JPML Rules 7.1. A copy of each of these conditional transfer orders is attached hereto as Exhibits B and C. These conditional transfer orders became final on July 27, 2009 and August 4, 2009, respectively. These thirty-two actions are now part of the consolidated action pending in the MDL Court, In re: Chase Bank USA, N.A., “Check Loan” Contract Litigation, No. 09-cv-02032-MMC (the “MDL”).

On September 19, 2012, Chase notified the clerk of the JPML that the above-captioned action is a potential tag-along action to the MDL because this action and the MDL involve common issues of fact. On September 24, 2012, the JPML clerk issued a notice declining to conditionally transfer this action to the MDL Court. Under JPML Rules 6.1 and 7.1(b)(i), Chase now has the opportunity to file with the JPML a motion to transfer pursuant to 28 U.S.C. § 1407

² Mr. Dimon does not concede the personal jurisdiction of this court and appears in this action for the limited purpose of seeking a stay for the purposes expressed herein. Mr. Dimon expressly reserves his right to file a motion to dismiss and to raise any defenses, including but not limited to the defense for lack of personal jurisdiction pursuant to Rule 12(b)(1), if the court retains jurisdiction.

(the “Transfer Motion”), which will be evaluated by the Judicial Panel itself. Chase anticipates filing the Transfer Motion shortly. Once the JPML receives the Transfer Motion, it will set a briefing schedule.

A stay of proceedings in this case pending the JPML’s decision on Chase’s anticipated Transfer Motion is appropriate and within the Court’s discretion. See, e.g., Bonenfant v. R.J. Reynolds Tobacco Co., 2007 WL 2409980 (S.D. Fla. July 31, 2007) (“It is a common practice for courts to stay an action pending a transfer opinion by the [JPML].”); Republic of Venezuela v. Philip Morris Cos., Inc., 1999 WL 33911677 (S.D. Fla. Apr. 28, 1999) (holding district court has “inherent power” to stay proceedings pending decision by JPML on transfer motion). Deferring litigation of this matter until the Judicial Panel renders a transfer decision serves the best interests of judicial economy and efficiency. Plaintiff’s Complaint and the MDL concern the same facts, i.e., an amendment to Chase’s contract with its cardmembers, and indeed, plaintiff Robert Ponte (“Plaintiff”) was a class member in the MDL before his opt out from that litigation. The MDL Court has become familiar with the facts underlying Plaintiff’s Complaint during the more than three years the MDL has been pending in that court. In that matter, the Court issued more than fifteen rulings on significant substantive and discovery matters. For example, the MDL Court has presided over a motion to dismiss, class certification and decertification briefing, cross-motions for summary judgment, and lengthy discovery proceedings. The MDL Court is well acquainted with the evidence necessary to adjudicate Plaintiff’s Complaint and it would be inefficient for this Court to revisit these issues before the Judicial Panel has the opportunity to assess the Transfer Motion. Counsel for Chase notified Plaintiff regarding seeking the stay and filing the Transfer Motion, and inquired whether Plaintiff would agree to the stay. Plaintiff did not have any comments.

In order to conserve the time and resources of the Court and the parties, Chase respectfully requests that the Court stay this action pending a final ruling by the JPML on Chase's Transfer Motion.

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Dated: September 28, 2012

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

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